Supreme Court, U.S.
FILED
JAN 22 1996
CLERK

(6)

No. 95-974

In The Supreme Court Of The United States

October Term, 1995

Arizonans for Official English and Robert D. Park,
Petitioners

v.

State of Arizona;
Maria-Kelley F. Yniguez; Jaime Gutierrez; and
Arizonans Against Constitutional Tampering
Respondents

On Petition for a Writ Of Certiorari to the
United States Court of Appeals for The Ninth Circuit

BRIEF AMICUS CURIAE OF U.S., INC., IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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January 19, 1996

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INTEREST OF AMICUS

U.S., Inc. is a Michigan non-profit corporation. The corporate purposes, as set forth in its 1982 Articles of Incorporation include: "to educate the general public on the causes and consequences of bilingualism in American society and to assist other organizations in so educating the general public." Amicus and its 25,000 members interested in this issue actively advocate English as the official language of the United States. Amicus does not oppose the use of foreign languages in personal and private contexts. Indeed, Amicus sponsors programs promoting foreign languages (Spanish, French and German), but not for use in official government business.

By constitutionalizing a political question, the 6-5 *en banc* majority below makes Amicus' mission more difficult. Counsel for all parties have consented to the filing of this brief.

STATEMENT OF CONTEXT

The majority ruling below extends far beyond Respondent Maria-Kelley Yniguez's interest in filing reports in Spanish with her English speaking supervisors. There are 322 languages spoken in the United States. U.S. Bureau of the Census, Document CPH-133, "1990 Census: Languages Spoken at Home and Ability to Speak English for Persons 5 Years and Over", *reprinted* in *The Social Contract*, Winter 1995-1996, Vol. VI, No. 2.). If Spanish, in addition to English, is permissible in government, why not the remaining languages? In a country diverse enough to have 322 spoken languages, some degree of commonality is needed, especially in the mode of communication.

Amicus asks this court to consider the downstream effects of the Ninth Circuit's 6-5 decision on the fundamen-

tal bonds of a nation-state. French Canada is now paying the price for its experiment with language separatism. The bond of a common language is the *unum* amidst a sea of racial, cultural, ethnic and religious *pluribus*. Could Judge Reinhardt's decision have been written in the language of his choice? Should it have been written in Spanish to show "solidarity" with Yniguez? Under our federal system, should the choice of language of Arizona state government be left to the Arizona electorate, or is this a federal-level prerogative? How far should a state go in accommodating 322 languages? How will we decide which of the several possible translations is the most accurate?

Public accountability of government employees is fundamental to our continuing experiment in self-governance. In this case, Respondent Maria-Kelley Yniguez's choice of language on the job compromises her employer's and financial auditor's ability to maintain accountability.

Yniguez claims she speaks a language her supervisor cannot understand because "It's kind of a solidarity thing." Petition for Writ of Certiorari ("Pet."), 2. This is highly-selective "solidarity." Her choice of language will not produce solidarity with co-workers not speaking the language she chooses to use. Rather, misunderstandings with fellow employees are more likely. Such hostilities in a non-governmental workplace gave rise to the dispute in *Garcia v Spun Steak Co.*, 998 F. 2d 1480 (9th Cir., 1993), *cert. denied*, __ U.S. __, 114 S.Ct. 2726 (1994) (mandatory English workplace rule was not discriminatory).

Without some commonality in our units of weights and measures, clocks, calendars, railroad gauges, currency, the 911 emergency call number, and the language of government, we may well find ourselves living in the proverbial Tower of Babel.

ADDITIONAL REASONS TO GRANT CERTIORARI

LANGUAGE SEPARATISM IN GOVERNMENT CONFLICTS WITH THE FUNDAMENTAL PURPOSE OF FREE SPEECH UNDER THE FIRST AMENDMENT.

A. The Decision Below Undermines An Important Foundation of Our National Compact.

The 6-5 *en banc* decision below weakens a prominent foundation of our fundamental national compact. Our fundamental national compact includes free speech. Maintaining a "marketplace of ideas" is the historic and fundamental purpose of the First Amendment. Oliver Wendell Holmes' dissent in *Abrams v. United States*, 250 US 616, 630, 40 S.Ct. 17, 63 L.Ed 1173 (1919); *U.S. v. National Treasury Employees Union*, 513 U.S. __, 115 S.Ct. __, 130 L.Ed 2d 964 (1995); *McIntyre v. Ohio Elections Commission*, 514 U.S. __, 115 S.Ct. __, 131 L.Ed 2d 426 (1995); *R.A.V. v. City of St. Paul*, 505 U.S. __, 112 S.Ct. 2538, 120 L.Ed 2d 305 (1992).

This "marketplace" functions best when people use a mutually understood language, and do not require an interpreter. Congress recognized this when it provided, in Arizona's Enabling Act, that all Arizona legislators be able to speak English without the aid of an interpreter. Ariz. Const. Art. XX, § 8.

In *Guadalupe Organization* v. *Tempe Elementary School Dist.*, 587 F. 2d 1022 (9th Cir., 1978) the court held the equal protection clause imposed no duty upon a school district to provide bilingual education to non-English speaking students. Judge Sneed stated: "Linguistic

and cultural diversity within the nation-state, whatever may be its advantages from time to time, can restrict the scope of the **fundamental compact**. Diversity limits unity." 587 F.2d at 1027 (emphasis added). The 6-5 majority below "disapproved" of Judge Sneed's analysis, thus threatening our "fundamental compact."

Judge Reinhardt's decision also conflicts with the official report of the U.S. Senate on the 1986 Immigration Reform Bill. S. Rep. No. 132, 99th Cong., 1st. Sess. 7 (if language separatism rises above a certain level, the unity and political stability of the nation will be "seriously diminished.").

The First Amendment protects "freedom of speech." The use of multiple languages does not free speech, but rather introduces impediments to understanding. The majority below indicates "Article XXVIII obstructs the free flow of information and adversely affects the rights of many private persons by requiring the incomprehensible to replace the intelligible." Pet. at 45a. The majority fails to note that services in languages other than English, at the discretion of an individual employee, might also be "incomprehensible" to others listening to the government. If the majority below were truly concerned with the rights of the public to receive information, Pet. at 44a, it should also have considered the effects of its position on the rights of persons other than the immediate recipient of the message.

When carried to its logical conclusion, the majority below lays the groundwork for a Tower of Babel constructed of (at present count) 322 languages. What began as a "marketplace of ideas" could easily degenerate into a "marketplace of undecipherable messages." Whether a "marketplace of undecipherable messages" is good public policy is not for the Ninth Circuit to decide. This is a political question for the Arizona electorate, not one for the judiciary to freeze into place under the First Amendment.

Fundamentally, the decision of whose rights should be emphasized in the performance of government services is a political choice, a choice which has been disturbed by the 6-5 decision below. The court should review the decision below.

B. Conflicts with U.S. Supreme Court Precedent on Governmental Speech.

The majority below conflicts with this court's decisions on government's choice of language. As Judge Kozinski's dissent below notes: "*Rust [v. Sullivan*, 500 U.S. 173, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991)] and *Rosenberger [v. University of Virginia*, 63 U.S.L.W. 4702 (U.S. June 29, 1995)] stand squarely for the proposition that the government may write the script when it is the speaker." Pet at 92a. Thus, under *Rust* and *Rosenberger*, the government may select the language it believes contributes most to government comity, efficiency and workplace harmony. Pet. at 78a-79a (Fernandez, J., dissenting), 86a (Kozinski, J., dissenting). Yet, according to the 6-5 majority below, the only choice available to the government is to *encourage* not *compel*, choice of language. Pet. at 59a. This court should review this case to give guidance to lower courts on the proper interpretation of *Rust* and *Rosenberger*.

CONCLUSION

Amicus respectfully requests this court to grant the Petition for Writ of Certiorari.

Respectfully submitted,

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